

REMARKS/ARGUMENTS

Restriction/Election Requirement:

The Office Action mailed on October 16, 2008 has required restriction from among the following two groups.

Group I includes claims 1-10 and 17-20 which encompass a method of preparing human mesenchymal stem cells by density gradient centrifugation.

Group II includes claims 11-16 which encompass mesenchymal stem cells and a pharmaceutical composition comprising mesenchymal stem cells.

Applicants hereby elect **Group II**, encompassing mesenchymal stem cells and a pharmaceutical composition comprising mesenchymal stem cells, with traverse, for further examination on the merits. It is understood that withdrawn method claims will be rejoined upon allowance of a product claim. Such rejoinder is respectfully requested.

Applicants assert that the examination of Groups I and II would not place a serious burden on the Examiner. In order to properly restrict claims there must be an undue burden on the Examiner if the restriction was not made.¹ Group II encompasses a mesenchymal stem cells used in the method claims of Group I. Because all of the claims are related to the same cells, Applicants submit that the examination of Groups I and II places no undue burden on the Examiner. Applicants respectfully submit that Groups I and II should be examined together, and request withdrawal of the Restriction Requirement for these Groups.

If the Examiner maintains this Restriction between the above Groups, then it is the Applicants understanding that the claims of Groups I and II shall be rejoined upon allowance of a linking claim. Where an Applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitation of the allowable product claims will be rejoined in accordance with the provisions of MPEP 821.04. Process claims that depend from or otherwise include all limitation

¹ MPEP § 803.

of the patentable product will be entered as a matter of right, if the amendment is presented prior to final rejection or allowance.

CONCLUSION

Applicants respectfully request prompt examination in the application. If there are any questions regarding this Response, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Applicants believe no additional fees are due with the filing of this Response. However, if any additional fees are required or if any funds are due, the USPTO is authorized to charge or credit Deposit Account Number: **50-0311**, Customer Number: **30623**, Reference Number: **38447-302N01US**.

Respectfully submitted,

/Sean M. Coughlin/
Ivor Elrifi, Reg. No. 39,529
Sean M. Coughlin, Reg. No. 48,593
Attorneys for Applicants
MINTZ, LEVIN, COHN, FERRIS
GLOVSKY and POPEO, P.C.
Tel: (202) 585-3577
Fax: (617) 542-2241
Customer No. 30623

January 16, 2009